

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)	
)	
v.)	Civil No. 08-736
)	Criminal Nos. 06-316-4 &
ROGER WILSON)	07-101

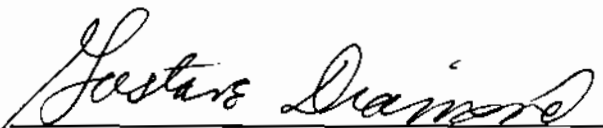
MEMORANDUM ORDER

AND NOW, this 30th day of June, 2008, petitioner Roger Wilson having filed a pro se motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. §2255 (Document No. 1), IT IS ORDERED that said motion be, and the same hereby is, **dismissed without prejudice.**

On October 10, 2007, petitioner pled guilty to Count One of the Indictment filed at Criminal No. 06-316, charging him with conspiracy to possess with intent to distribute 5 kilograms or more of cocaine, and to Count One of the Indictment filed at Criminal No. 07-101, charging him with possession with intent to distribute less than 500 grams of cocaine. Petitioner was sentenced on January 8, 2008, to a term of imprisonment of 65 months. Subsequently, petitioner filed a direct appeal from his judgment and sentence which currently is pending in the Third Circuit Court of Appeals. Petitioner then filed the current motion in the United States Court of Appeals for the Third Circuit, which transferred the motion to this court.

The general rule long has been that, absent extraordinary circumstances, a district court should not consider a §2255 motion while a defendant's direct appeal is pending. See, United States v. Robinson, 8 F.3d 398, 405 (7th Cir. 1993); see also Kapral v. United States, 166 F.3d 565, 572 (3d Cir. 1999) ("defendants have long been discouraged from commencing §2255 proceedings before the conclusion of direct review."); Advisory Committee Notes to Rule 5, Rules Governing §2255 Proceedings. ("courts have held that [a §2255] motion is inappropriate if the movant is simultaneously appealing the decision.")

Petitioner has not alleged, and the court does not find, any extraordinary circumstances in this case warranting consideration of petitioner's §2255 motion by this court during the pendency of petitioner's direct appeal. Accordingly, petitioner's motion will be dismissed without prejudice to his re-filing the motion following final disposition of his direct appeal.



Gustave Diamond
United States District Judge

cc: Constance M. Bowden
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Roger Wilson

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